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R. VOIGHT SHEALY
MATERIALS MANAGEMENT OFFICER

August 23, 2007

Anthony Moskos, President
Greenville Diesel
16 Boland Court, I-85 & Pelham Road
Greenville, SC 29615

Re: **DECISION**
IN THE MATTER OF: Protest
Establish Contract to supply Remanufactured Injection Pumps and Injectors for
South Carolina Department of Education, School Bus Maintenance Facilities
IFB NO.: 07-S7473
CASE NUMBER: 2007-118

Dear Mr. Moskos:

Please find enclosed the Decision of the Chief Procurement Officer concerning the administrative review held on August 13, 2007, relative to the referenced matter.

If I can be of assistance to you in this matter, please let me know. Also, please note that a copy of this Decision has been posted today on the sixth floor of the Materials Management Office, 1201 Main Street, Columbia, South Carolina.

Respectfully,

R. Voight Shealy
Chief Procurement Officer
for Goods and Services

enclosure

cc: Keith McCook, Assistant General Counsel
John Stevens, State Procurement Officer
Allen Register, Senior Procurement Manager
Richard Brinkley, Procurement Manager
Kenneth W. Smith, Ambac International
Shelly Kelly, Deputy General Counsel, Dept. of Education
Rhoda Bigham, Procurement Director, Dept. of Education
Marshal Casey, Assistant Director, Maintenance, Dept. of Education

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE NO. 2007-118
)	
Greenville Diesel, Inc.)	
)	
Materials Management Office)	POSTING DATE:
IFB No. 07-S7473)	
Remanufactured Injection Pumps and)	
Injectors for the Department of Education))	AUGUST 23, 2007
<u>School Bus Maintenance Facilities</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a handwritten letter of protest from Greenville Diesel, Inc. (GDI). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure remanufactured injection pumps and injectors for the State Department of Education's (SDE) school bus maintenance shops. In the letter, GDI protested MMO's intent to award to AMBAC International (AMBAC). Read as a whole, GDI's protest might be understood to protest either the specifications or the responsibility of AMBAC. Read either way, the focus of GDI's protest regards its dissatisfaction with allowing someone to remanufacture the injection pumps and injectors without having been certified by the original manufacturer, Stanadyne.

The IFB covered six different injectors and injection pumps. AMBAC received the award for all six items. The protest only covers the award for remanufacturing Navistar (International) 6.9 liter and 7.3 liter injection pumps and injectors, which were items 1, 2, 3, and 4 of the IFB [Lot #1]. According to Marshall Casey, Director of Maintenance for SDE, with this procurement, SDE attempted to locate a source for remanufactured injectors and injection pumps for buses built before 1990, about 1,500 buses still operating in SDE's fleet. The injectors on those buses are AMBAC and United Technology models, but the injection pumps are all Stanadyne models.

In order to resolve the matter, the CPO conducted a hearing August 13, 2007. Appearing before the CPO were GDI, represented by A.C. Moskos, President; AMBAC, represented by Robert Stramm, President,

and Kenneth Smith, Manager of Marketing; SDE, represented by Shelly Kelly, Esq., and MMO, represented by John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On April 11, 2007, MMO issued the IFB. [Ex. 1]
2. On April 25, 2007, MMO issued Amendment No. 1. [Ex. 2]
3. On April 26, 2007, MMO issued Amendment No. 2. [Ex. 3]
4. On May 11, 2007, MMO issued Amendment No. 3. [Ex. 4]
5. On May 29, 2007, MMO opened the following bids:

Lot 1, Items 1-4

<u>Bidder</u>	<u>Lot Total</u>
AMBAC	\$1,002,219.20
GDI	1,083,529.20
Superior Diesel	1,308,820.00

Lot 2, Items 5-6

<u>Bidder</u>	<u>Lot Total</u>
AMBAC	\$1,882,287.00
[See Ex. 6, Analysis of Bids by Vendor]	

6. On June 19, 2007, MMO posted an intent to award to AMBAC for both lots (all 6 items). [Ex. 8]
7. On June 26, 2007, the CPO received GDI's protest.

MOTION TO DISMISS

At the outset of the hearing, SDE and MMO joined in a motion asking the CPO to dismiss GDI's protest as untimely filed. They argued that GDI raised three questions in its protest; two that relate to AMBAC not being certified by Stanadyne to remanufacture the fuel pumps, and one that raises no additional grounds, but merely requests that the CPO look into the matter "for the reasons stated above." Specifically, GDI alleged that only facilities certified by the original manufacturer, in this case Stanadyne, are qualified to refurbish the fuel pumps for the Navistar 6.9 and 7.3 engines. SDE acknowledged that the original IFB included a requirement that each offeror must submit "A letter of certification identifying the remanufacturing facility as a factory certified service center." [Ex. 1, p. 9] However, they argued that Amendment No. 1 removed that requirement altogether.

In the interest of ensuring the safety of the State's children riding these buses, the CPO held the motion in abeyance and proceeded with the hearing. However, after considering all the arguments, the motion is granted. Amendment No. 1 read: **"Deleted-A letter of certification identifying the remanufacturing facility as a factory certified service center. This is no longer a bid requirement."** [Amendment 1, p. 12, emphasis in the original] The amendment left no doubt that the bidders were no longer limited to Stanadyne certified service centers. GDI could have protested the amendment, but chose not to.

The Consolidated Procurement Code (Code) reads:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. [11-35-4210(1)]

MMO issued Amendment No. 1 on April 25, 2007. GDI did not file its protest with the CPO until June 26, 2007, which is well beyond the fifteen days allowed for protesting a solicitation document.

The protest is dismissed.

In the event this matter is appealed and the Procurement Review Panel disagrees with the dismissal of the protest as untimely filed, the CPO will address the merits of the protest.

GDI's protest might be read to argue that AMBAC is not qualified to remanufacture the Stanadyne injection pumps; in Code parlance, that AMBAC is not a responsible bidder. The Code requires “[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State.” [11-35-1810(1)] It defines a responsible bidder as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.” [11-35-1410(6)]

AMBAC responded that it is fully qualified to remanufacture Stanadyne injection pumps. According to AMBAC officials at the hearing, AMBAC has:

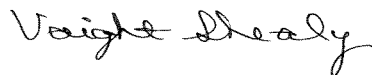
- hired Stanadyne certified technicians
- obtained original Stanadyne drawings, specifications, and service bulletins for the injection pumps from Navistar, the vehicle manufacturer
- purchased a Stanadyne certified “stand” from Columbia Fuel Injection, which will be used to remanufacture the Stanadyne injection pumps

AMBAC’s assertions were supported by Jerry Harris, Chairman, President and CEO of Diesel Equipment Company of Greensboro, NC, the authorized Stanadyne central distributor for South Carolina, North Carolina, Virginia, West Virginia, Delaware, and Maryland, who stated that AMBAC:

- can buy remanufactured Stanadyne injection pumps – anyone could – from Diesel Equipment Company
- can buy and resale Stanadyne injection pumps, and
- can remanufacture Stanadyne injection pumps.

These facts must be considered in light of the age of the Stanadyne injection pumps. Mr. Harris stated that in a warranty situation, the remanufacture would have to be done by an authorized service distributor such as GDI. In this case, where the injection pumps are almost twenty years old (1990 and older), no warranty exists. Absent warranty considerations, remanufacture need not be restricted to Stanadyne authorized service distributors.

Given the evidence offered by AMBAC, and in the absence of any evidence by GDI, I find that GDI failed to prove that AMBAC is a non-responsible bidder and deny the protest.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

August 23, 2007

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

Deb Martin - SOL.#07-S7473....standyne pumps/inj for 6.9/7.3l school buses

From: <YZAIRMAN@aol.com>
To: <PROTEST-MMO@MMO.STATE.SC.US>
Date: 6/22/2007 1:04 PM
Subject: SOL.#07-S7473....standyne pumps/inj for 6.9/7.3l school buses

Greenville diesel , inc. is respectively protesting the award given to ambac int. with repect to the stanadyne injection pumps and injectors for the 6.9/7.3l school buses.it is with deep cocern for greenvillediesel, the state, and the children riding on these buses that we must do so. stanadynes materials are only for certified stanadyne dealers and may not be copied, used, etc.by anyone else, especiallynever trained in this area. we attend schools, use their parts, there bulletins, equipment, tooling etc. to give the state a quality product. we do mnot want ot see children hurt ar lawsuits against the state because the state is knowingly aallowing unauthorized pumps to be built if there was an accident and deaths, etc.could occur. all of our concerns are splled out in a letter we are faxing to you and also sending certified mail. respectively, anthony c. moskos, president

See what's free at <http://www.aol.com>.

Greenville Diesel, Inc.

16 Boland Court, I-85 & Pelham Road
Greenville, South Carolina 29615, (803) 288-7926

7/22/07

* Protest *

Solicitation: 07-57473

Opening Date: 5/29/07

Agency: Ed. Dept Acct Payable / Materials Mng. Office

Award was given to Ambac Int.

Contract # was 07-57473-A13103

* Bidders Right to Protest as listed in section 11-35-4210 in the S.C. Consolidated Procurement Code.

* This protest pertains to the Injection Pumps & Injectors for the 6.9/7.5 Navistar School Bus engines only. After conversations with Richard Brinkley, he knew & said several items would have to be changed. Also other service dealers had notified him. Even after voicing our concerns, the final amendment award still contains areas of great concern. As follows, I will list those & will wait to hear a response.

* As far as a ~~car~~ injector failing, there would only be a skip or smoke & bus could run rough. Purchasing them from an outside source if not authorized & selling them would not be cause for alarm since only minor drivability concerns would occur as described above.

* As far as injection pumps / injectors are concerned, one must be aware that on a 6.9/7.5 school bus, a failure could escalate into catastrophic proportions. If an injection pump were to simply come apart while driving or fail & shut the engine
Factory Authorized Sales & Service
"Gas & Diesel Turbos Our Specialty"

(See pg 2)

Greenville Diesel, Inc.

16 Boland Court, I-85 & Pelham Road
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Down, there would at that time more probably be no brakes, steering, etc. on other problems out of the drivers control. We feel strongly that only people familiar with the Stanadyne fuel systems and have been to school, etc. should be working on a system that controls and entire bus conveyor to a car ins. that it had would not cause such problems. Being Stanadyne Certified means we have access to the latest service bulletins that may pertain to that particular pump; it is very important, we use OEM Stanadyne parts, we have the latest factory specifications to calibrate these pumps after the rebuilding process, our test stands are regularly checked by a central distributor authorized by Stanadyne to be sure they are in specs also.

- Question
- 1.) Does the state want to assume the responsibility of liabilities resulting from accidents and lawsuits if a bus were to have an accident because of an injection pump being knowingly built by an unauthorized fuel shop, but given the o.k. to do so by the State, when deaths could occur.
 - 2.) Does the state want to let this party whom I know have no personnel qualified or trained personnel to build & calibrate these pumps. Foremost, this would infringe on Stanadyne's by laws & contract

will have access to any of Stanadyne's materials including parts breakdowns, calibration data, CD roms, data disc, etc. What if any OEM parts would be used. I can never let this occur. They

And Stanadyne would ...
will be notified & have a huge and large concern
with this entire matter as described in this protest letter.

3) This contract bidding first started in Dec. of
1996 & took this long. We know that there
were several matters that were not presented
properly and this award to AMBAC is
being protested for the reasons stated above.

We feel it is in the best interest of the
state to look deeply into this situation,
contact Stanadyne Corporation, and legal
counsel to resolve this matter. Please
understand we are not only looking out
for our well being, but for yours, but
most importantly for 50 or 60 kids that
could tragically lose their lives if any
inexperienced builders or inexperienced guys
were used.

Respectively,
We submit

* Please take note that
Greenville Diesel will be
closed the week of July 4th.
but we are certain this
matter will need more time
and attention ~~given~~ Diesel Injection - Turbocharger - Electrical
on it anyway. Parts & Service

Anthony C. Moskos President
Anthony C. Moskos President